Court of Appeals No. 56602-8-II

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

JASON HILL,
Appellant
-
VS

WALDMER KLASSAN, et al.
Respondent

APPELLANT'S OPENING BRIEF

Appeal from Clark County Superior Court
No. 21-2-01356-06

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I. INTRODUCTION

Appellant Jason Hill ("Hill") takes this appeal from the trial court's order granting Respondent's Motion for Summary Judgment and its order denying Hill's Motion for Reconsideration.

At issue herein is whether pre-suit settlement discussions between counsel may form a binding settlement agreement in the absence of agreement on all of the terms of the settlement. Here, Hill and Respondents' insurer engaged in settlement discussions and reached an agreement only as to the amount of the settlement. The insurer then prepared a release which contained terms not addressed by counsel in their email communications, and Hill elected not to sign the release. Nonetheless, the trial court dismissed Hill's Complaint, finding that the parties reached agreement on the amount of the settlement.

II. ASSIGNMENTS OF ERROR

1) The trial court erred as a matter of law in dismissing Hill's Complaint where there was no enforceable settlement agreement between the parties.

2) The trial court erred as a matter of law in granting summary judgment absent a finding that there were no genuine issues of material fact remaining to be determined.

III. STATEMENT OF ISSUES RELATED TO ERRORS

1) Whether parties may be deemed to have entered into a binding settlement agreement on the basis of email communications that do not address all the terms of the settlement.

2) Whether a trial court may enter summary judgment absent a finding that there are no genuine issues of material fact.

IV. STATEMENT OF THE CASE

Hill filed this action to recover for personal injuries he suffered when he was struck, while standing, by a semi operated by Appellee Waldmer Klassan on February 10, 2020, in Clark County, WA. (CP 4) Klassan and his employer, Appellee Joshua

Transport, Inc., were insured by Great West Casualty Company ("Great West") at the time of the accident. (CP 16)

Prior to filing suit, Hill's counsel and Great West engaged in settlement negotiations. (CP 16). Hill initially agreed to a settlement amount of $40,000 but withdrew from settlement negotiations upon reviewing the release prepared by Defendants. (CP 26, 33)

After receiving that confirmation, Great West prepared a settlement check and a release for Hill's signature. (CP 16) The terms of that release were not discussed during counsels' email negotiations and were not known to Hill or his counsel until the document was presented to counsel. (T. 5:8-21)

The release prepared by Great West specifically advised Hill that:

> [T]he Undersigned do(es) hereby acknowledge receipt of forty thousand and 00/l00DOLLARS ($40,000.00), which sum is accepted in full compromise settlement and satisfaction of, and as sole consideration for the final release and discharge of, all actions, claims and demands whatsoever, that now exist, or may hereafter

accrue, against Joshua Transport Inc, Waldemar Klassen, Great West Casualty Company and any other person, corporation, association or partnership charged with responsibility for injuries to the person and property of the Undersigned, and the treatment thereof and the consequences flowing therefrom, as a result of an accident, casualty or event which occurred on or about the 10th of February, 2020, … (emphasis supplied)

***

The Undersigned agrees as a further consideration and inducement for this compromise settlement, that it shall apply to all unknown and unanticipated injuries and damages resulting from said accident, casualty or event, as well as to those now disclosed, and;

***

Additionally, the Undersigned agrees to indemnify, defend and hold harmless the released parties from any claim for reimbursement, double damages, penalties, fines and attorney fees relating to a governmental entity asserting such claims under … federal or state laws.

***

The Undersigned acknowledges that his or her injuries may be more severe or serious than he or she now experiences or anticipates, and that he or she may have suffered further injuries

> which symptoms do not now exhibit themselves and that a portion of the consideration paid by those released herein to the undersigned shall operate as a final release and discharge of all such presently unknown and unanticipated injuries and damages resulting from said accident, casualty or event, as well as those now disclosed.

After reviewing the release Hill spoke with his doctor and decided not to sign the release. (CP 33).

At the oral hearing on the Motion for Summary Judgment, the trial court indicated that a binding agreement existed and granted the motion. (T. 6:23-25)

Appellees' counsel prepared an order for the trial court's signature. (CP 64). Before signing the order, the Court struck two important points from the order. First, the Court struck the portion of the order stating that there were no genuine issues of material fact. Second, the Court struck the portion of the order stating that the parties reached an enforceable agreement pre-suit, that Hill's claims are therefore barred, and that the case was dismissed with prejudice. What remains is simply an

indication that the motion was granted, and a factual finding that Hill was offered $40,000 to settle his claims against Defendants, and that he accepted the offer.

Faced with this entry, Plaintiff requested that the trial court reconsider its Order granting summary judgment on the ground that an error of law was committed when the motion was granted without a finding that the parties entered into an enforceable agreement and that there were no genuine issues of material fact. (CP 67). The trial court denied the motion for reconsideration, and this appeal followed. (CP 93).

V. ARGUMENT

This case comes before the Court on an unusual posture. The trial court's remarks at hearing indicate that it intended to grant summary judgment. It is unclear why the trial court then struck relevant portions of the proposed entry before signing the entry. In any event, Hill's claims were dismissed by that Order, making his arguments concerning the formation of an

agreement relevant whether the trial court intended to grant summary judgment under CR 56, or a more generic dismissal under CR 12.

A. Standard of Review

"An appellate court reviews an order of summary judgment by conducting the same inquiry as the trial court, considering all facts submitted and making all reasonable inferences from those facts in the light most favorable to the nonmoving party." *Bruns v. PACCAR, Inc*., 77 Wash. App. 201, 203, 890 P.2d 469, 471 (1995).

"To grant a motion of summary judgment properly, the facts must demonstrate that no genuine issue as to any material fact exists and that the moving party is entitled to judgment as a matter of law." Id, citing Wash. Super. Ct. Civ. R. 56(c).

B. The Trial Court Erred As A Matter of Law By Terminating the Action Based Upon The Content of Counsel's Emails.

It is well settled that settlement agreements are governed by the law of contracts. *Stottlemyre v. Reed*, 35 Wash. App. 169, 171, 665 P.2d 1383 (1983). A contract exists when the intention of the parties is plain and the terms of a contract are agreed upon, even if one or both of the parties contemplated later execution of a writing. Id.

To be valid, a contract requires offer, acceptance, and consideration. *Christiano v. Spokane Health Dist.,* 93 Wash. App. 90, 95, 969 P.2d 1078 (1998). "There is no valid contract until an offer is accepted." *Hansen v. Transworld Wireless*, 111 Wash. App. 361, 370, 44 P.3d 929 (2002). Acceptance is communication to the person making the offer of the intention to be bound by the offer's terms. *Plouse v. Bud Clary of Yakima, Inc.*, 128 Wash. App. 644, 648, 116 P.3d 1039 (2005).

To determine whether a contractual relation has been established by informal writings, where the parties have in mind the subsequent signing of a formal written contract, it is necessary to inquire whether (1) the subject matter has been

agreed upon, (2) the terms are all stated in the informal writings, and (3) whether the parties intended a binding agreement prior to the time of the signing and delivery of a formal written contract. *Loewi v. Long*, 76 Wash. 480, 484, 136 P. 673 (1913); *Evans & Son, Inc. v. Yakima,* 136 Wash. App. 471, 476, 149 P.3d 691, 693 (2006).

When viewed within the framework of Loewi and its progeny, it is clear that Hill's assent to the amount of the settlement did not create a binding agreement.

1. The Parties' Written Communications Failed to Address Important Terms Of The Settlement

In this instance, Hill merely agreed to the amount of settlement with an insurer.[1] He was then presented with a release that contained terms that the parties had not discussed, including the identity of the released parties and the fact that the release would apply to damages not then known and to be incurred in the future related to both the accident and any future

[1]Pre-suit settlement negotiations were conducted by counsel for Plaintiff and counsel for the Defendants' insurer.)T. 4:5-7).

treatment. Hill did not agree to these additional terms merely by agreeing to the amount of the settlement.

Other courts faced with similar facts have rejected the notion that a settlement agreement was formed merely because a party agreed to one term of a settlement. For example, in *Condon v. Condon,* the parties stipulated in open court to a settlement of claims arising from an automobile accident. A release was subsequently drafted by the defendant's counsel, and plaintiff refused to sign it, claiming that it was overbroad. Defendant contended that the release was "standard" and persuaded the trial court to enter an order deeming the release signed.

The Washington Supreme Court reversed the trial court, specifically noting that "[I]t is the duty of the court to declare the meaning of what is written, and not what was intended to be written." *Condon v. Condon*, 177 Wash. 2d 150, 162, 298 P.3d 86, 92 (2013) (citing *J.W. Seavey Hop Corp. v. Pollock*, 20 Wash. 2d 337, 349, 147 P.2d 310 (1944)). The Court also cited

Oliver v. Flow Int'l Corp. for the proposition that "[c]ourts will also not imply obligations into contracts, absent legal necessity typically resulting from inadequate consideration." *Oliver v. Flow Int'l Corp.,* 137 Wash. App. 655, 662, 155 P.3d 140 (2006).

Turning to the release before it, the Court concluded that there was no evidence that the parties agreed to the release proposed by the defendant. Of particular concern was the release provision which, like the one here, required the plaintiff to indemnify the defendant against claims of parties who may have a lien against the proceeds. Speaking to this specifically, the Court held that there was no evidence that these terms were contemplated by the parties - when the plaintiff agreed to dismiss her claims, she only released the defendant as to those claims, and did not agree to indemnify or hold defendant's insurer harmless as to any other claims. *Condon*, 177 Wash. 2d at 164, 298 P.3d at 93.

Similarly, in *Evans & Son*, the court was faced with a situation in which the plaintiff agreed to a settlement amount, but not to other material terms included in a subsequent release agreement. Applying the holding of Loewi, the court there concluded that the pre-release communications did not bind the parties. *Evans & Son, Inc*., 136 Wash. App. at 476, 149 P.3d at 693 ("Certainly, the parties agreed that the subject matter of any agreement was the settlement of claims from the park project. But as to the second requirement—that the writings include all of the provisions of the agreement—genuine issues of material fact remain. The only material term agreed upon in the letters was the amount of the settlement.")

Here, the evidence demonstrates nothing more than that Hill agreed to a settlement amount with Great Western There is no evidence that he understood that settlement would include both Joshua Transport and Waldemar Klassen and their insurer. There is no evidence that Hill agreed to forego future damages, unknown damages, or damages related to treatment of his

injuries. There is no evidence that Hill agreed to indemnify and hold harmless Great Western, Joshua Transport and Klassen in the event a lien is asserted against the settlement proceeds.

The defendant in *Condon* urged the Court to find that the terms of the release were standard, and therefore implied as part of the settlement. The Court rejected this argument, citing several cases for the proposition that the terms of a release "must be specifically stated and not implied.". *Condon*, 177 Wash. 2d at 165, 298 P.3d at 93.

In granting the Motion for Summary Judgment, the trial court did exactly what the Washington Supreme Court has directed that it cannot - imply all of the terms of the release into Hill's agreement as to an amount for which he was willing to settle.

2. The Parties Did Not Intend A Binding Agreement Prior To Entering Into The Release.

In the email that Great Western contends constituted a binding agreement, the expectation that a written release would

be signed is specifically mentioned. The parties plainly expected that a release would contain the full terms of the agreement. Certainly, had Hill cashed their check prior to signing the release, Defendants would likely not be before the Court arguing that they were bound by the settlement. Defendants are therefore unable to demonstrate that "the parties intended a binding agreement prior to the time of the signing and delivery of a formal written contract." *Loewi,* 76 Wash. at 484, 136 P. 673.

C. The Trial Court Erred In Granting Summary Judgment Without a Finding That The There Were No Genuine Issues of Material Fact.

Between a trial court's written order and its conflicting oral ruling, the written order controls. See Lang Pham v. Corbett, 187 Wash. App. 816, 830-31, 351 P.3d 214 (2015). Here, the trial court granted the Motion for Summary Judgment, and struck the portion of the order finding that "[t]here are no genuine issues of material fact." Summary judgment may not

be granted absent this finding. Wash. Super. Ct. Civ. R. 56(c). The trial court erred as a matter of law in granting the Motion for Summary Judgment, and by denying the Motion for Reconsideration.

VI. CONCLUSION

For the foregoing reasons, this Court should reverse the trial court's final orders and remand this case for further proceedings allowing Mr. Hill's claims to go forward.

VII. Certificate of Compliance

This document contains 2,962 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Date: June 15, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Michael R. Dufour, certify under penalty of perjury under the laws of the United States and of the State of Washington that on June 15, 2022, I caused to be served the document to which is attached to the parties listed below in the manner shown below:

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